

REMARKS

Objection to the Specification and Drawings

The Specification stands objected to under 37 CFR 1.75(d)(1) and MPEP 608.01(o) as allegedly failing to provide proper antecedent basis for the “sensor window” recited in claim 9. The Drawings likewise stand objected to under 37 CFR 1.83(a) as allegedly failing to show the claimed “sensor window.” These rejections are respectfully traversed.

A sensor window 326, 526 was originally depicted in Figs. 3 and 5 but, insofar as the undersigned attorney has been able to discern, not specifically described in words. Accordingly, support for the claimed “sensor window” already exists in the original Drawings. However, to overcome the objection to the Specification, Applicants have amended the Specification at page 12 (paragraph 34) to provide a description of the sensor window relative to the sensor, viz.:

“The sensor 325 may have a sensor window 326 affixed to the housing 305 of the monitoring device 300, for providing a viewpath 329 for the sensor 325.”

It is respectfully submitted that the amendment to the Specification at paragraph 34 is fully supported by the original written description, including Fig. 3, as well as the original content of claim 9, and that no new matter has been added by the foregoing language.

Other Amendments to the Specification

The Specification has been also amended at paragraphs 2 and 56 to correct obvious grammatical or typographical errors. It is respectfully submitted that no new matter has been added by these minor corrections.

The § 112, ¶ 2 Rejection

Claim 9 presently stands rejected under The § 112, ¶ 1 as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. In particular, the Office Action states that the claimed “sensor window for providing a **viewpath** for the sensor unit” is indefinite because it is unclear whether the “sensor window” is for a person to view the sensor or for the sensor to view the outside. This rejection is respectfully traversed.

Claim 9 has been amended to recite that the “sensor window provid[es] a viewpath for said sensor unit to obtain said depth measurements.” The added language reinforces the original intent of the claim language to describe a sensor viewing the outside through the sensor window. It is respectfully submitted that this minor clarification does not narrow the scope of the original claims in any way, but merely serves to reinforce the original subject matter as presented in claim 9.

Claim Amendments

As noted in the introductory remarks, claims 1-8, 10-22, 24-31, 33-52, and 54-59 presently stand rejected under 35 U.S.C. § 102(b) and/or 103(a) as allegedly unpatentable over various cited items. Without acquiescence in the grounds of the rejection, independent claims 1, 29, and 42 have been amended to incorporate the subject matter of allowed claims 23, 32, and 53, respectively, along with the subject matter of any intervening claims. It is therefore respectfully submitted that claims 1, 29, and 42 stand in condition for final allowance.

Claims 20, 23, 30-32, 51 and 53 have been canceled in view of their incorporation into the independent claims, and, in addition, claims 58-59 have been canceled without acquiescence in the grounds of the rejection or prejudice to pursue at a later time. The remaining claims (i.e., 2-19, 21-22, 24-28, 33-41, 43-50, 52, and 54-57) depend from independent claims 1, 29, or 42, respectively, and therefore should be allowable as well.¹ While the dependent claims have further novel and non-obvious aspects, consideration thereof is deemed unnecessary in view of the amendments and remarks pertaining to the independent claims above.

It is therefore believed that all of the currently pending claims are in condition for final allowance.

¹ Claims 21, 22 and 52 have been amended to adjust their dependency in view of the cancellation of claims.

Reservation of Right to Challenge Cited Items

While Applicants have elected to respond to the Office Action by making various claim amendments as set forth herein, this should not be construed as an admission that the cited items constitute prior art or otherwise provide an enabling disclosure. Applicants reserve the right to challenge the sufficiency of any of the cited items as prior art at a later point in time, including in any post-issuance proceeding or suit, if appropriate.

March 5, 2002 IDS

The Office Action does not appear to indicate that the Examiner considered the references submitted with the March 5, 2002 Information Disclosure Statement. In particular, the Office Action does not appear to include a copy of the relevant Form-1449 with the list of references initialed by the Examiner. If the failure to include the initialed Form-1449 with the Office Action was inadvertent, Applicants kindly request that a copy be officially made of record. To facilitate the Examiner's review, Applicants are providing herewith another copy of the March 5, 2002 Information Disclosure Statement (as Exhibit A) and stamped postcard indicating receipt by the PTO thereof, along with copies of the previously submitted references. Because Applicants are not submitting any new information, it is respectfully submitted that no fee is required for re-submission of the March 5, 2002 IDS.

Request for Allowance

If the Examiner requires further information or clarification concerning any of the matters herein, then the undersigned representative of Applicants may be contacted at the telephone number listed below or the e-mail address of cvanderlaan@irell.com so as to expedite resolution of this application.

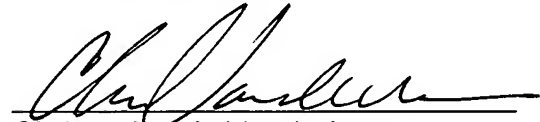
In view of the foregoing, it is respectfully submitted that the present application stands in condition for final allowance, and a notice of allowance is earnestly solicited.

Respectfully submitted,

IRELL & MANELLA LLP

Dated: July 8, 2005

By:



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